

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

STEPHEN BRONTE ADVISORS LLC	:	
	:	
v.	:	CFTC Docket No. CRAA 02-02
	:	
NATIONAL FUTURES ASSOCIATION	:	ORDER DENYING STAY
	:	

Stephen S. Bronte Advisors LLC (“Bronte Advisors”) has appealed from a decision of the National Futures Association (“NFA”) revoking its registrations as a commodity trading advisor (“CTA”) and commodity pool operator (“CPO”). NFA revoked the firm’s registration based on findings that Bronte Advisor’s principal, Stephen Bronte (“Bronte”), gave false testimony at both a court hearing in April 1999 and at his recent hearing before a Subcommittee of NFA’s Membership Committee. NFA concluded that this pattern of dishonesty amounted to “other good cause” for denying registration under Section 8a(3)(M) of the Commodity Exchange Act (“Act”).

Bronte Advisors seeks a stay of the registration revocation pending our review of NFA’s decision. As to the merits, Bronte Advisors claims that NFA committed procedural errors, made factual findings unsupported by the record, and fundamentally misinterpreted the scope of Section 8a(3)(M) of the Act. As to irreparable harm, Bronte submitted an affidavit claiming that absent a stay: (1) customers of a pool operated by Bronte Advisors will suffer adverse tax implications; (2) his reputation will be harmed; and (3) he will lose amortized start-up costs and his means of income.¹ Finally, Bronte Advisors argues that granting a stay will serve the public

¹ Bronte’s affidavit claims that the loss of income will make it impossible for him to afford the costs of his child support obligations and aggressive, ongoing cancer treatments for himself and his wife

interest without adversely impacting the interests of NFA. NFA's opposition to the petition contends that Bronte Advisors' showing falls far short of the requirements of Commission Rule 171.22.

Under Commission Rule 171.22, the Commission evaluates petitions for a stay pending appeal in terms of four factors: (1) whether petitioner is likely to prevail on the merits; (2) whether petitioner will be irreparably harmed without a stay; (3) the effect that the issuance of a stay will have on the opposing party; and (4) the effect that either the issuance or denial of a stay will have on the public interest.

In this instance, petitioner fails to persuasively show either that it is likely to succeed on the merits or that denying the stay will result in irreparable harm. While the interpretation of Section 8a(3)(M) underlying NFA's decision is quite broad, it is not facially incompatible with our Interpretive Statement recognizing that "any act . . . [demonstrating] lack of honesty," as well as "[a]ny inability to deal fairly with the public and consistent with just and equitable principles of trade" may amount to "other good cause" for revoking registration under that provision. *See In re Clark*, [1996-1998 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,032 at 44,928 (CFTC Apr. 22, 1997), *quoting* Appendix A to the Commission's Part 3 Rules.² Moreover, Bronte's affidavit in support of petitioner's showing on irreparable harm raises as many questions as it answers. For example, Bronte acknowledges that beginning in March 1999, Bronte Advisors substantially reduced both its CTA and CPO activities. Nevertheless, in describing the various financial harms that he believes will flow from the failure to grant a stay, he fails to offer any specific estimate of either his own or the firm's assets or income. Without

² Petitioner's diffuse challenges to NFA's factual assessments and procedural rulings do not support an inference that it is likely NFA erred in a manner that materially prejudiced petitioner's right to a reliable and fair fact-finding process. *See*, Commission Rule 171.34(c) (defining the standards of review for NFA registration actions).

meaningful information about these financial issues, we cannot reliably conclude that depriving Bronte of the income derived from his firm's "substantially reduced" business would impose substantial, let alone irreparable, harm.³

Accordingly, Bronte's petition for a stay is denied.

IT IS SO ORDERED.

By the Commission (Acting Chairman NEWSOME and Commissioners HOLUM, SPEARS, and ERICKSON).

Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission

Dated: November 30, 2001

³ We note that, as a general matter, monetary loss alone does not rise to the level of irreparable harm. *Global Futures Holdings, Inc. v. National Futures Association*, [1998-1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,467 at 47,241 (CFTC Nov. 24, 1998). In this instance, Bronte's allegation that deprivation of his income from the firm will make it impossible for him to continue to receive treatment for a life-threatening illness provides a potential link between his alleged financial harm and truly irreparable harm. Bronte's affidavit, however, does not reliably show that he will actually suffer a loss that would preclude further treatment.